

**EASTERN CARIBBEAN SUPREME COURT
BRITISH VIRGIN ISLANDS**

**IN THE HIGH COURT OF JUSTICE
COMMERCIAL DIVISION**

CLAIM NO. BVIHCM 2022/0101

BETWEEN:

[1] **BLUE OCEAN CREATION INVESTMENT HONG KONG LIMITED**
[2] **BLUE OCEAN STRUCTURE INVESTMENT COMPANY LTD**

Claimants

and

GOLDEN MEDITECH STEM CELLS (BVI) COMPANY LIMITED

Defendant

Appearances:

Mr. David Chivers, KC, with him Ms. Hilary Stonefrost and Mr. Edmond Fung for the Claimants
Mr. Alan Steinfeld, KC, with him Mr. John Carrington, KC, and Ms. Reisa Singh for the Defendant

2023: February 22, March 21, 22, 23;
July 31.

JUDGMENT

[1] **WALLBANK, J. (Ag.):** This is the Judgment of the Court in respect of an application by the Claimants for summary judgment dated 17th February 2023 and amended on 24th February 2023 (the 'Summary Judgment Application') and an application by the Defendant dated 7th February 2023 for permission to re-amend its Defence and Counterclaim (the 'Re-Amendment Application').

[2] Both applications were heard together, over four days in February and March this year. For the reasons given below, the Court's judgment is that the 'Summary Judgment Application' succeeds and the 'Re-Amendment Application' fails.

1. Introduction

- [3] This matter concerns a dispute between two groups over the (majority) beneficial ownership over a company called Global Cord Blood Corporation ('GCBC'). In the simplest of terms, the Claimants claim that GCBC was purchased by their group from the group to which the Defendant belongs, and that the Claimant's group beneficially owns GCBC. The Defendant's group admits to the sale but points to certain legal documents, the effect of which would appear to give the Defendant beneficial ownership over GCBC. The Claimants say these documents are unknown to them and that they are forgeries. The Defendant says the Claimants do indeed know about those documents and are bound by them, even if they are forgeries.
- [4] The details of the matter and corporate structures concerned appear complicated, but at heart, the issues are reasonably straightforward.
- [5] The First Claimant ('Blue Ocean HK') is incorporated in Hong Kong. It is the legal and beneficial owner of all the shares in the Second Claimant. The Second Claimant ('Blue Ocean BVI') is incorporated in this jurisdiction (the 'BVI').
- [6] These two companies are indirectly controlled by Nanjing Ying Peng Hui Kang Medical Industry Investment Partnership (Limited Partnership) (the 'Ying Peng Fund'), which is a limited liability partnership investment fund constituted pursuant to a partnership agreement (the 'Partnership Agreement') entered into on or about 1st December 2016. This limited partnership was constituted of two general partners on the one hand and a number of limited partners on the other. The Ying Peng Fund is not a party to these proceedings. These three entities can, for present (simplified) purposes, be regarded as the Claimants' group.
- [7] The Defendant's group, for present purposes, includes the Defendant, Golden Meditech Stem Cells (BVI) Company Limited ('GM BVI'). As its name suggests, GM BVI is incorporated in this jurisdiction. GM BVI is wholly owned and controlled by Golden Meditech Holdings Limited (GMHL), which is a Cayman Islands exempt company that conducts business in the Peoples Republic of China ('PRC'). GMHL, which was founded by a Mr. Kam Yuen ('Mr. Kam'), has been a private company since October 2020. Mr. Kam is its Chairman and Chief Executive Officer.

- [8] GM BVI used to be the holder of certain shares in GCBC, which is also a Cayman Islands exempt company that conducts a valuable business in the PRC. It is, (or at material times was), listed on the New York Stock Exchange.
- [9] The Ying Peng Fund, through its General Partners, raised capital to purchase 65.4% of the total issued ordinary voting shares in GCBC. Blue Ocean BVI then acquired the GCBC Shares from the Defendant, GM BVI, pursuant to a Share Purchase Agreement dated 30th December 2016 (the ‘GCBC SPA’). Blue Ocean BVI is now the holder of record of the GCBC Shares and, the Claimants’ assert, their beneficial owner.
- [10] The purchase price was expressed, at Article 1.1 of the GCBC SPA, as follows:
- ““**Purchase Price**” means the price payable by the Purchaser to the Seller in exchange of the Target Assets, which shall be an amount equal to RMB5,764,000,000 to be paid in RMB (and/or any other currency as otherwise agreed by and between the Purchaser and the Seller).””
- [11] On 27th June 2018 in a Report of Directors to the shareholders of GMHL, as part of that company’s Annual Report for the financial year 2017/2018, the Chairman of GMHL’s Board of Directors, Mr. Kam, made specific mention of this sale and purchase transaction.
- [12] In his ‘Chairman’s Statement’, he informed GMHL’s shareholders:
- “Following **the successful completion of the disposal of 65.4% equity interest** in Global Cord Blood Corporation (formerly known as China Cord Blood Corporation) for a cash consideration of RMB5,764,000,000 (equivalent to approximately HK\$7,122,204,000 as at the date of disposal), **the Board rewarded shareholders with a special cash dividend** of HK\$0.30 per share in appreciation of their continuous support.” (Emphasis added.)
- [13] It was noted that Mr. Kam:
- “Resigned as a director and chairman of Global Cord Blood Corporation (formerly known as China Cord Blood Corporation) (“GCBC”) on 30 January 2018.”
- I make this observation because such resignation is commensurate with completion of disposal of GCBC by GMHL to a third party in that financial year.
- [14] Then, after summarizing details concerning the disposal, the Annual Report (signed off by Mr. Kam as Chairman) stated:
- “The completion of the Disposal took place on 31 January 2018.”

[15] In this Annual Report there was also a Report of GMHL's Independent Auditors, KPMG. KPMG treated this disposal as a 'Key Audit Matter' and *inter alia* stated:

"On 30 December 2016, the Group entered into a conditional sale and purchase agreement (the "Sale and Purchase Agreement") with Nanjing Ying Peng Hui Kang Medical Industry Investment Partnership (Limited Partnership) (the "Partnership"), pursuant to which the Partnership conditionally agreed to acquire approximately 65.4% of the ordinary shares of GCBC held by the Group, assuming all convertible notes issued by GCBC had been converted into ordinary shares in full, at a cash consideration of RMB5,764 million (the "Disposal").

The Disposal was completed on 31 January 2018 upon fulfilment of the closing conditions set out in the Sale and Purchase Agreement. The Group lost control over GCBC since then and accordingly a pre-tax gain of HK\$4,502 million was recognised in the consolidated income statement for the year ended 31 March 2018." (Emphasis added.)

[16] KPMG continued, *inter alia*:

"Our audit procedures to assess the accounting for the gain in respect of the Disposal included the following:

- ...
 - ...
 - evaluating the appropriateness of accounting treatment relating to the Disposal with reference to the requirements of the prevailing accounting standards and re-performing management's calculation of gain on the Disposal;
 - **inspecting evidence of receipt of the consideration from the Partnership**, agreeing and reconciling the consideration received by the Group to the Sale and Purchase Agreement; and
 - considering the disclosures in the consolidated financial statements in respect of the Disposal with reference to the requirements of the prevailing accounting standards.
- (Emphasis added.)

[17] On 30th June 2020, KPMG, again as the independent auditors of GMHL, issued a report to GMHL's shareholders confirming that it had audited that company's consolidated financial statements and that of its subsidiaries, which comprise the consolidated statement of financial position as at 31st March 2020, that is to say for GMHL's financial year 2019/2020. These consolidated financial statements stated the following at Note 21:

"On 30 December 2016, Golden Meditech Stem Cells (BVI) Limited ("GMSC") [GM BVI], a wholly owned subsidiary of the Company and the Company entered into a conditional sale and purchase agreement (the "Agreement") with [the Ying Peng Fund], pursuant to which, GMSC [GM BVI] conditionally agreed to sell and [the Ying Peng Fund] agreed to acquire 65.4% ordinary shares in Global Cord Blood Corporation ("GCBC") (the "GCBC Shares") at a consideration of RMB5,764,000,000 (Consideration). **During the year ended 31 March 2018 the disposal of GCBC was**

completed. Details of the disposal of the GCBC Shares have been disclosed in the annual report of the Company for the year ended 31 March 2018.

During the year ended 31 March 2020, **the Group carried out the procedures regarding offshore remittance in accordance with relevant clauses of the Agreement, resulting in other receivables of RMB 2,259,398,000 ... as at 31 March 2020.** Such procedures are expected to be completed and the other receivables are expected to be received within one year.” (Emphasis added.)

[18] From these materials, which emanate from the Defendant itself, one is told that:

- (1) GM BVI had disposed of the shares in GCBC;
- (2) the disposal was completed on 31st January 2018;
- (3) the conditions specified in the SPA had been fulfilled;
- (4) GMHL’s group had ‘lost control’ of GCBC;
- (5) GMHL’s Board resolved to grant its shareholders a special dividend, which is commensurate with a successfully completed disposal.

[19] The Court is told that the Claimants also shared that understanding, and that they still do.

[20] But the parties are not *ad idem* on these matters.

[21] On 20th October 2020, that is to say, well after these reports, GM BVI served a Stop Notice (the ‘October Stop Notice’) on the Registered Agent of Blue Ocean BVI claiming that GM BVI is beneficially entitled to all rights, title and interest in 72 shares in the share capital of Blue Ocean HK. That Stop Notice was supported by a First Affidavit of one Mr. Leong Kim Chuan, a director of GM BVI. In this, Mr. Leong alleged that Blue Ocean HK had entered into a share charge (‘the BVI Share Charge’) as security for two loan facility agreements:

- (1) A purported loan agreement dated 29th March 2018 alleged to have been entered into by the Ying Peng Fund as borrower and GMHL as lender (the 29th March 2018 Loan Agreement); and
- (2) A purported loan agreement dated 30th March 2018 alleged to have been entered into between a company called Sanpower Group Limited as borrower and GMHL as lender (the 30th March 2018 Loan Agreement).

[22] The BVI Share Charge was also dated 30th March 2018.

- [23] The 29th March Loan Agreement¹ expressed that thereby the Ying Peng Fund agreed to borrow RMB1,837,000,000 from GMHL, to be repaid, together with interest at 12% per annum payable on a monthly basis, on or before 30th June 2018.
- [24] The October Stop Notice claimed that Blue Ocean HK had failed to repay any part of the sums allegedly payable under the 29th March 2018 Loan Agreement, which constituted an Event of Default under the BVI Share Charge. Accordingly, GM BVI alleged they were entitled to the shares in Blue Ocean BVI, of which Blue Ocean HK is the registered shareholder.
- [25] GM BVI maintained that the 29th March 2018 Loan Agreement and the BVI Share Charge were signed on behalf of Blue Ocean BVI and Blue Ocean HK by a Mr. Xu Ping (Mr. Xu), who is a director and authorized signatory of both these Blue Ocean companies, and that it bears the chop of the Ying Peng Fund.
- [26] Mr. Xu has, however, gone on oath to say that he did not sign those documents and that the signatures had been forged, rendering both documents invalid and executed fraudulently.
- [27] The Defendant's side have similarly sought to rely upon another purported share charge (the 'Cayman Share Charge'), dated 30th March 2018, over shares in GCBC, in respect of which Blue Ocean BVI is the holder of record. GMHL alleges the Cayman Share Charge was entered into by GMHL and by Blue Ocean BVI and that it was also executed by Mr. Xu on behalf of Blue Ocean BVI. Mr. Xu, and the Claimants' side, contend the Cayman Share Charge is also a forgery and that Mr. Xu did not sign it.
- [28] The Claimants aver that they and the Ying Peng Fund had no knowledge of the purported 29th March 2018 Loan Agreement, the BVI Share Charge and the Cayman Share Charge (together, 'the Disputed Documents') prior to being served with Stop Notices.
- [29] According to the Defendant's version of events, no correspondence had been exchanged between the parties to agree a draft or drafts of the Disputed Documents. The Defendant's version of events is that the documents were prepared in draft by someone on their side, and

¹ At Bundle C Part 2 pdf page 305 and onwards.

then handed over in hard copy to the other side at an in-person meeting, when they were then discussed orally and agreed, without lawyers present.

[30] Moreover, whilst drafts for the Disputed Documents had been prepared for the Defendant by a well-known and reputable law firm (Messrs Conyers Dill & Pearman, or 'Conyers'), there is no evidence that Conyers dealt with lawyers for the Defendant's contractual counterpart. The evidence is that Conyers prepared and furnished the Defendant's staff with draft documents, with blanks to be filled in, and that the Defendant's staff then finalised those documents themselves before allegedly handing them over at one or more meetings with representatives of the Claimants' side. There is no evidence that the Claimants' side had involved lawyers to consider, advise on and assist the Claimants in respect of these drafts.

[31] Concerning who, on the Defendant's side, prepared the Disputed Documents, the Defendant puts forward an Affirmation of one Mr. Chen Bing Chuen Albert ('Mr. Albert Chen') filed in these proceedings on 7th March 2023. At paragraph 9.2, Mr. Albert Chen said that:

“...I went on to: - (a) draft a loan agreement between Ying Peng and GMHL; and (b) prepare two share charge documents with the assistance from Messrs. Conyers Dill & Pearman (**"Conyers"**).”

[32] Correspondence between Conyers and someone from the Defendant's side concerning preparation of the Share Charges is in evidence. It shows that Conyers corresponded with someone identifying as 'samkykong', signing off as 'SK', using an email address of samkykong@goldenmeditech.com. It appears to be uncontroversial that 'samkykong' and 'SK' are other names, or aliases, that Mr. Albert Chen uses. He does not deny, and indeed states in terms, that it is he who dealt with Conyers. Another name he uses at least when using WeChat, according to the evidence, is 'DRACO'. Quite why Mr. Albert Chen adopts different identities when conducting business is unclear, although there is evidence before the Court that in Cayman proceedings evidence has been led that Mr. Albert Chen explained in a WeChat message in relation to a different transaction (in 2016):

'I am Albert CHEN but on this project, people refer to me as SK.'²

² Bundle C Part 3 pdf page 469 at paragraph 33 of the Sixth Affirmation of Mr. Xiaoyang Chen filed in Cayman proceedings on 31st August 2022.

[33] The evidence is that Mr. Albert Chen was then (in 2016) asked whether 'SK' stood for anything. He is said to have responded:

"It does not. I just can't be myself on this deal."³

[34] It would appear, on the face of this, that the *persona* of 'SK' has evolved since 2016 to become a more fulsome 'samkykong' by March 2018 and that on the present impugned transaction he could also not, for some reason, 'be himself'.

[35] After this brief introduction, we will need to look more closely at what the parties say happened.

[36] After receiving the Stop Notice, the Claimants took action, both in the Cayman Islands and in this jurisdiction to stop the Defendant's side from taking steps pursuant to these allegedly forged documents.

[37] Thus, on 20th May 2022 the Claimants filed an Application Notice in this Court seeking orders to restrain GM BVI from taking any steps in reliance upon the Cayman Share Charge.

[38] On the same date, 20th May 2022, the Claimants filed a Claim Form seeking declarations that the BVI Share Charge and Cayman Share Charge are invalid and of no legal effect and orders restraining the Defendant from enforcing the purported charges.

[39] The stated grounds for the claim were, in essence, that the Disputed Documents had been forged. The Claimants also alleged that another alleged signature to those documents, that of a Mr. Yuan Yafei ('Mr. Yuan'), to the 29th March 2018 Loan Agreement, had been forged. They added that the Ying Peng Fund and Mr. Xu had been unable to identify a purported witness to Mr. Xu's signature on that purported loan agreement, allegedly one Wang Gang.

[40] The key paragraphs in the Statement of Claim read as follows:

"11. The 29 March Loan Agreement purports to have been signed by Mr Xu Ping next to the purported company seal of Ying Peng. Such purported signature is not the genuine signature of Mr Xu Peng and is a forgery. The purported seal of Ying Peng is not

³ At paragraph 34 of the Sixth Affirmation of Mr. Xiaoyang Chen filed in Cayman proceedings on 31st August 2022.

genuine and is a forgery. The 29 March Loan Agreement was not affixed with the genuine seal of Ying Peng.

12. The BVI Share Charge (together with all purported ancillary documents) purports to have been signed by Mr Xu Ping. Such purported signatures are not the genuine signature of Mr Xu Ping and are forgeries.”

[41] In respect of the Cayman Share Charge:

“14. On 13 May 2022 the Defendant by its legal advisers provided a copy of an alleged share charge dated 30 March 2018 and purportedly made between Blue Ocean BVI and the Defendant in respect of the GCBC Shares (“the Cayman Share Charge”).

15. Blue Ocean BVI had no knowledge of or involvement in the Cayman Share Charge and had not seen the same until such was provided on 13 May 2022.

16. The Cayman Share Charge (together with all purported ancillary documents) purports to have been signed by Mr Xu Ping. Such purported signatures are not the genuine signature of Mr Xu Ping and are forgeries.”

[42] GM BVI filed a Defence and Counterclaim dated 17th June 2022.

[43] In its Defence, GM BVI proffered a bare denial of the forgery allegations contained in paragraphs 11, 12 and 16 of the Statement of Claim.

[44] GM BVI made a counterclaim, seeking declarations that the BVI and Cayman Share Charges are valid, and consequential orders. In this Counterclaim, the Defendant descended to detail of its case. The nub of it, in summary, is as follows, but it maintained that the Disputed Documents did not bear forged signatures and a forged Ying Peng Fund chop. The Defendant claimed that the Claimants had had knowledge of and substantial involvement in the 29th March 2018 Loan Agreement and BVI Share Charge, and the proposal that they be entered into, since 27th February 2017.

2. The Defendants’ version of events

[45] In a nutshell, the Defendant’s version of events can briefly be summarized as follows. Nothing in this segment is to be taken as a finding of the Court. It merely seeks to relate the Defendant’s narrative in as short a summary form as possible.

- [46] The principal (indirectly) of the Defendant is Mr. Kam. As appears to be uncontroversial, over the years Mr. Kam has met with and discussed numerous matters with Mr. Yuan, a powerful business magnate in the PRC. Mr. Yuan is the founder and chairman of a multi-national conglomerate called the Sanpower Group, which is headed by a company called Sanpower Group Co., Ltd.
- [47] Mr. Yuan has been and/or is assisted by Mr. Xu, who is a Senior Vice President of the Sanpower Group, in charge of cross-border mergers and acquisitions and financing. Mr. Xu, says the Defendant, is and was at all material times a member of the investment decision committee of, and an authorized representative of, Ying Peng Fund, as well as a Director of both Claimants. The Defendant describes Mr. Xu as a 'very close associate' of Mr. Yuan.
- [48] The Defendant in essence sees the disposal by GM BVI of GCBC to the Ying Peng Fund as something ultimately negotiated and agreed between the two controlling individuals, Mr. Kam for the one part and Mr. Yuan for the other part. The Claimants deny that Mr. Yuan controlled Ying Peng Fund, but we will come on to this further in due course.
- [49] At around the time in question (about 2016 - 2018), there had been various dealings between entities of both sides.
- [50] On or about 7th December 2016, an escrow account (the 'Escrow Account') was opened at a certain bank in China for the handling of the purchase price for the sale and purchase of the GCBC shares. The Ying Peng Fund paid RMB5,764,000,000 into the Escrow Account in three tranches, the last tranche being paid on 5th January 2017.
- [51] On 2nd June 2017, at the request of Mr. Yuan, RMB2,922,105,000 was paid out of the escrow account to a company ('NL') that was a counterparty to another business deal that Mr. Yuan was doing. Mr. Kam's side had agreed to this payment being made. According to the Defendant, Mr. Yuan had promised Mr. Kam in June 2017 that this amount would be paid back into the Escrow Account before the closing of the GCBC SPA.
- [52] The Defendant says that only RMB1,200,000,000 of the RMB2,922,105,000 was paid back into the Escrow Account before the closing of the GCBC SPA became due.

- [53] The Defendant says, moreover, that (as the Defendant claims to have found out subsequently) on 29th June 2017, Ying Peng Fund paid RMB499,000,000 into the Escrow Account for the purchase of shares in GCBC owned by GCBC's management team. The following day, however, at the request of Mr. Yuan, and with the consent of Mr. Kam's side, that money was also paid out to NL. In the event, the Ying Peng Fund did not proceed with the purchase of those GCBC shares.
- [54] The Defendant says that on 26th September 2017, GM BVI notified the Ying Peng Fund in writing that the closing conditions for the GCBC SPA had been satisfied, that closing should take place, and that the outstanding consideration should be released from the Escrow Account.
- [55] Around then (September 2017), Mr. Kam and Mr. Yuan met to discuss an extension of time to close the GCBC SPA. This led to the conclusion of a supplemental agreement to the GCBC SPA, whereby the closing date was extended until 31st December 2017, or, for an extension fee of US\$10million, it could be extended until 31st January 2018.
- [56] In the event, avers the Defendant, the extended deadlines were not met and part of the consideration remained outstanding. Rather than leave the closing in abeyance, it proceeded, but the liability on Ying Peng Fund's part to pay the (alleged) shortfall in consideration was reflected in a loan agreement, between Sanpower Group Co. Ltd. and GMHL in January 2018.
- [57] The Defendant says that during a call in early February 2018, Mr. Yuan asked Mr. Kam not to tell the Limited Partners in the Ying Peng Fund about the Sanpower January 2018 Loan Agreement.
- [58] Sanpower Group Co. Ltd., also entered into a loan agreement with GMHL to borrow a sum of US\$53 million, unrelated to the GCBC SPA (the 'Fortress January 2018 Loan Agreement').
- [59] On 15th March 2018, NL made a payment of RMB500 million to the Escrow Account, pursuant to the Sanpower January 2018 Loan Agreement.
- [60] On 27th February 2018 Mr. Kam met Mr. Yuan, who was accompanied by Mr. Xu and a Ms. Wang Caiyi, in Tokyo. The Defendant says Mr. Yuan and Mr. Kam agreed that the Sanpower

January 2018 Loan Agreement and the Fortress January 2018 Loan Agreement would be replaced by a new arrangement, which would become the 29th March 2018 Loan Agreement, secured by the BVI and Cayman Share Charges and a personal guarantee from Mr. Yuan.

- [61] The total net amount owing to GMHL would be RMB1,837.03 million, being a balance of various credit and debit amounts pertaining to these transactions which I have just outlined.
- [62] In March 2018 Mr. Albert Chen prepared the documents (which became the Disputed Documents). The Defendant says that Mr. Albert Chen then handed the draft documents to Mr. Xu in person on 16th March 2018 at an EGM of GCBC.
- [63] On and/or before 28th March 2018 both Mr. Albert Chen and Mr. Kam allegedly contacted Mr. Xu about signing and returning the documents, including by WeChat.
- [64] The Defendant says that on 28th March 2018, Mr. Albert Chen sent Mr. Xu the telephone number of a Ms. Fiona Wang, an assistant in GMHL's administration, for transmission of the executed documents. At about 4 p.m. that day, Ms. Fiona Wang supposedly received a call from a man, who did not give his name (the 'Unnamed Man'), and she then arranged to meet the Unnamed Man at Beijing Capital Airport. He is said to have handed her 17 pages, which included signature pages for the Disputed Documents. Ms. Fiona Wang handed the Disputed Documents to a then Director of GMHL, a Ms. Zheng, who scanned them and sent them to Mr. Kam by WeChat. The originals that had (allegedly) been handed over by the Unnamed Man were then placed in safekeeping in a safe.
- [65] The Defendant's pleaded account then moves to a short statement that in breach of Article 4 of the 29th March 2018 Loan Agreement repayment of the loan was not made on or before 30th June 2018. This, of course, begs the question whether the Defendant had corresponded with the Claimants' side before invoking the Share Charges, as one would ordinarily expect in *bona fide* arms' length commercial transactions.. There is no evidence of any such correspondence here. But the Defendant, clearly anticipating such a question, has pleaded an answer to it, recounting that there had been a series of oral communications.
- [66] The Defendant says that Mr. Kam met with Mr. Yuan, with Mr. Xu and a Ms. Yang on 30th May 2018, at which meeting Mr. Kam suggested that the GCBC SPA should be reversed, but Mr.

Yuan explained that this purchase was important to the Sanpower Group in light of a restructuring on foot in the Sanpower Group. Mr. Yuan is said to have asked for a further extension of time, until the end of September 2018, to pay the outstanding consideration, and to have agreed to sign a confirmation of debt.

[67] This led to the agreement of another suite of documents, comprising what the Defendant described as a 'Debt Confirmation and Repayment Agreement'.

[68] The Defendant says Mr. Yuan begged Mr. Kam on many occasions between May 2018 and September 2020 not to make the existence of the BVI and Cayman Share Charges public as the Sanpower Group was undergoing debt restructuring. Hence, says the Defendant, the BVI and Cayman Share Charges were not registered.

[69] The Defendant counterclaimed for relief which would declare the validity and effect of the Disputed Documents in the Defendant's favour.

3. The Claimants' Reply and Defence to Counterclaim

[70] The Claimants filed a Reply and Defence to Counterclaim on 1st July 2022.

[71] The Claimants denied that the 29th March 2018 Loan Agreement and the BVI Share Charge were entered into. The Claimants said they have no direct knowledge about the loan agreement between Sanpower Group and GMHL dated 30th March 2018, and they do not admit the validity of the 30th March 2018 Loan Agreement and put the Defendant to strict proof thereof.

[72] The Claimants denied that the Ying Peng Fund is indebted to GMHL in the sum of RMB 2,767,134,333.33 or any sum.

[73] The Claimants pleaded that Mr. Xu had some knowledge of proposals that the BVI Share Charge and the Cayman Share Charge should be considered, but only in his capacity as Senior Vice President of Sanpower Group. They said that such proposal was never raised with or for consideration or approval by the investment decision committee of the Ying Peng Fund or

the Claimants. The Claimants denied that they had any knowledge at all of the 29th March 2018 Loan Agreement.

[74] The Claimants averred that the 29th March 2018 Loan Agreement was not signed by Mr. Yuan and that his purported signature is a forgery. The Claimants aver that Ying Peng did not execute the 29th March 2018 Loan Agreement and that Mr. Xu did not sign such on behalf of Ying Peng Fund, nor did he sign the BVI Share Charge. Further, pleaded the Claimants, Mr. Xu did not in any event have authority to sign the 29th March 2018 Loan Agreement on behalf of the Ying Peng Fund, the Ying Peng Fund being subject to a Partnership Agreement. The Claimants averred that none of the requisite formalities were followed which would in any event have authorised the purported entry into the 29th March 2018 Loan Agreement.

[75] The Claimants pleaded also that the Cayman Share Charge is not valid.

[76] In terms of a Defence to the Counterclaim, the Claimants laid out their position in the following way.

[77] The Claimants asserted that Mr. Xu was Senior Vice President of Sanpower Group until the end of 2018, and that he has been a member of the investment decision committee of Ying Peng Fund from around 7th December 2017. The Claimants profess that it is unclear what is meant by the Defendant's allegation that Mr. Xu was an 'authorised representative' of Ying Peng Fund. The Claimants denied that Mr. Xu was alone entitled or had authority by himself to bind Ying Peng to contractual commitments or to bind it to loan agreements. The Claimants clarified in a Response to a Request for Further Information that:

"Subject to Article 19.3 of the Partnership Agreement of Ying Peng, Mr. Xu Ping did not have the power to sign documents on behalf of Ying Peng at his sole discretion. Mr Xu Ping could only sign documents on behalf of Ying Peng in accordance with an authorisation provided by Ying Peng."

[78] The Claimants admit that Mr. Xu has been a director of GCBC since January 2018.

[79] The Claimants admit there had been ongoing negotiations involving Sanpower Group and GMHL but say that Mr. Xu was not aware of the detail of those negotiations.

- [80] The Claimants deny that Mr. Xu acted for or represented Ying Peng Fund in relation to the 29th March 2018 Loan Agreement. The Claimants aver that Ying Peng did not execute the 29th March 2018 Loan Agreement and Mr. Xu did not sign the same. The Claimants also aver that Mr. Xu did not sign either of the BVI or Cayman Share Charges.
- [81] Concerning the various payment movements alleged by the Defendant, the Claimants' position was essentially one of non-admission. The Claimants admitted that on 29th June 2017, Ying Peng Fund paid RMB499,000,000 into the Escrow Account for the purchase of shares in GCBC owned by GCBC's management team. But the Claimants expressly did not admit that any sums (including the alleged RMB 2,922,105,000) were paid out of the Escrow Account to NL. The Claimants asserted that NL 'has no relationship to or with Ying Peng or the Claimants'.
- [82] The Claimants admitted that a supplemental agreement had been entered into to extend the closing date for the GCBC SPA to the end of December 2017.
- [83] The Claimants aver that Ying Peng Fund had paid the consideration for completion of the GCBC SPA and that the Ying Peng Fund was not a party to any agreement by which there was to be any deficiency in the total consideration.
- [84] The Claimants say that the Ying Peng Fund had by January 2018 paid all the consideration into the Escrow Account and that there was no outstanding amount Ying Peng Fund was obliged to pay. The Claimants do not say that there were no payments out of the Escrow Account, but simply that any payments out of the Escrow Account have no relevance to the Ying Peng Fund, which had met its obligations to pay the consideration.
- [85] The Claimants made no admissions concerning the alleged Sanpower Group January 2018 Loan Agreement but denied such an agreement had any relevance.
- [86] The Claimants made no admissions regarding the Fortress January 2018 Loan Agreement. They said that if Mr. Xu had been provided with that document, this was in his capacity as Senior Vice President of Sanpower Group. The Claimants asserted that Mr. Xu was not aware of the detail of the Fortress January 2018 Loan Agreement; he was merely aware that there were ongoing negotiations between GMHL and Sanpower Group; he would on occasion pass

documents between representatives of Sanpower Group and GMHL with no knowledge of the details.

[87] In relation to alleged communications between the Defendant's side and Mr. Xu, the Claimants averred that, as a result of the passage of time and change of personal mobile phones, Mr. Xu no longer has access to his WeChat messages to be able to disclose them or show what had been, or had not been, communicated.

[88] The Claimants pleaded the following in relation to the alleged meeting in Tokyo at which the 29th March 2018 Loan Agreement was allegedly conceptually agreed:

“...it is admitted that on or about 27 February 2018 there was a meeting in Tokyo between Mr Kam, Mr Yuan, Mr Xu Ping and Ms Wang. Save as aforesaid, no admissions are made as to any such alleged agreement between Mr Yuan and Mr Kam. Mr Yuan was not authorised to make such purported agreement on behalf of Ying Peng or either of the Claimants. It is denied that there was ever any discussion at a meeting at which Mr Xu Ping was present about a loan to Ying Peng. It is admitted that in or around 2018 there was a discussion about the provision of share charges to secure the borrowing of Sanpower Group. Mr Xu Ping expressed in the strongest terms that no such share charges could ever be entered into or agreed to by Ying Peng or the Claimants.”

[89] The Claimants admitted that Mr. Xu attended an extraordinary general meeting of GCBC on 16th March 2018, but they say that Mr. Xu does not recall being handed documents at that meeting by Mr. Chen and in any event was not aware of the existence of the Share Charges until October 2020. The Claimants put the Defendant to proof that Mr. Xu was supplied with copies of the 29th March 2018 Loan Agreement and the Share Charges at this meeting.

[90] The Claimants deny that Mr. Xu was contacted by persons representing the Defendant's side to execute and provide the 29th March 2018 Loan Agreement and the alleged share charges. The Claimants pleaded non-admissions to the Defendant's narrative about the delivery of the Disputed Documents at Beijing Capital Airport.

[91] The Claimants averred that the purported signatures on the Disputed Documents of Mr. Xu and Mr. Yuan were forgeries.

[92] The Claimants also made no admissions as to the figures or basis of calculation for the alleged sums payable under the 29th March 2018 Loan Agreement.

4. The Defendant's Reply to Defence to Counterclaim

[93] The Defendant filed a Reply to Defence to Counterclaim on 8th July 2022. Its central theme was to assert that Mr. Xu and Mr. Yuan had authority to enter into the Disputed Documents. In respect of Mr. Xu, the Defendant pleaded:

“...it is averred that Mr Xu had authority (including sole authority) to sign and execute contractual documents (including loan agreements) on behalf of Ying Peng, including the 29 March Loan Agreement. By way of example:

4.1. Mr Xu as sole signatory signed as the “Legal Representative or Authorised Representative” of Ying Peng in the GCBC SPA dated 30 December 2016.

4.2. Mr Xu as sole signatory signed as “Authorised Signing Representative” of Ying Peng in the Profit Compensation Agreement between Ying Peng and GMSC dated 30 December 2016.

4.3. Mr Xu as sole signatory signed as “Legal Representative/Authorised Representative” of Ying Peng in the Memorandum of Arrangement for Payment of Transaction Consideration among GMSC, GMHL, Ying Peng and Nanjing Ying Peng Asset Management Co., Ltd. (Ying Peng GP) dated 31 May 2017.

4.4. Mr Xu as sole signatory signed as “Legal Representative or Authorised Representative” of Ying Peng in the Letter of Undertaking between GMSC and Ying Peng dated June 2017.

4.5. Mr Xu as sole signatory signed as “Legal Representative or Authorised Representative” of Ying Peng in the Supplemental GCBC Agreement dated 14 November 2017... .

4.6. Mr Xu as sole signatory signed as “authorised signatory” of Ying Peng in the Charge over Securities of GCBC dated 31 May 2017.

4.7. Mr Xu is named (alone) as the “authorised representative” of Ying Peng in the Escrow Agreement dated around 27 December 2017.

4.8. Mr Xu as sole signatory signed (by affixing his personal chop) on behalf of Ying Peng the Ying Peng LP Charge II dated 30 June 2018

4.9. Mr Xu as sole signatory signed (by affixing his personal chop) on behalf of Ying Peng the Ying Peng GP Charge dated 30 June 2018

4.10. Mr Xu as sole signatory signed as “Legal Representative or Authorised Representative” of Ying Peng in the Limited Partners Transfer Agreement between Shanghai Blue Ocean and Ying Peng dated 31 May 2017.”

[94] The Defendant also pleaded that:

“The Escrow Agreement states that Mr Xu is the authorised representative of Ying Peng.”

[95] Concerning Mr. Yuan’s authority, the Defendant pleaded the following:

“It is averred that Mr Yuan had authority to make requests on behalf of Ying Peng and to make promises on behalf of Ying Peng and/or act on behalf of Ying Peng and/or Ying Peng would act in accordance with Mr Yuan’s directions:

10.1. Mr Yuan is the chairman and founder of Sanpower Group.

10.2. Sanpower Group holds 35.99% of the shares in Nanjing Xinjiekou Department Store Co., Ltd (“**Nanjing Department Store**”). Nanjing Department Store is a limited partner in Ying Peng holding 6.09% of Ying Peng.

10.3. Sanpower Group owns 100% of Ying Peng LP.

(1) Ying Peng LP is a limited partner in Ying Peng holding 9.14% of the shares in Ying Peng.

(2) Ying Peng LP holds 100% of the shares in Ying Peng GP, which is a general partner in Ying Peng holding 0.08% of the shares.

10.4. Ying Peng and Mr Yuan have the same principal business address: No. 68 Software Avenue, Yuhuatai District, Nanjing, China.

10.5. On 1 September 2016 GMHL entered into an earnest money agreement (the “Earnest Agreement”) with Sanpower Group pursuant to which Sanpower Group agreed to pay to GMHL RMB 300m to facilitate the sale and purchase of the GCBC Shares.

10.6. On 30 December 2016 (pursuant to clause 4.3(3) of the GCBC SPA) Ying Peng delivered a letter of guarantee executed by Sanpower Group and Mr Yuan in which each provided that they jointly and severally guarantee the performance of all the obligations of Ying Peng under the GCBC SPA.

10.7. Pursuant to a partnership agreement in respect of Ying Peng dated 1 December 2016, the voting and disposition of the GCBC Shares is determined by an investment committee (the “Investment Committee”). The Investment Committee is comprised of five members. Subject to certain exceptions, all decisions of the Investment Committee must be made by a majority vote and each member has one vote. Mr Yuan has the right to indirectly appoint three members of the Investment Committee.

10.8. Following requests by Mr Yuan as pleaded at paragraphs 35.1 and 36.1 of the Counterclaim payments were made out of the Escrow Account. Those payments were made following the provision to ICBC of the personal chop of Mr Xu by or on behalf of Ying Peng.”

[96] Following this exchange of pleadings, it was, as the Claimants have submitted, common ground that the central dispute in these Proceedings was as to whether the signatures of Mr. Xu on the Share Charges were genuine and also that this dispute could be resolved by each

party instructing handwriting experts to give their opinion as to whether the signature that purported to be that of Mr. Xu on the Share Charges was genuine.

[97] Leading Counsel instructed by the Defendant for the Defendant's unsuccessful injunction application that was heard by this Court on 15th June 2022 (Mr. Hermann Boeddinghaus, KC,) told the Court that:

“So, my Lord, the issue in the Claim and Counterclaim are very clearly identified and crystallised. And what it comes down to is who is right. Does the Share Charge, among other thing, contain forgeries or does it not? And that in turn will come down very largely, if not wholly to the expert evidence and also the credibility of the relevant witnesses.”

[98] With the permission of the Court the parties instructed handwriting experts and those experts exchanged their respective reports on 25th November 2022. The result of this was that both sides' experts took the view that the signatures were not genuine. The Defendant's expert concluded that it was 'highly probable' that the signatures on each of the Share Charges and the 29th March Loan Agreement were not Mr. Xu's genuine signature and that the purported Ying Peng Fund Chop affixed to the 29th March Loan Agreement was also a forgery.

[99] The expert evidence that the signatures and the Ying Peng Fund Chop were not genuine has not been challenged.

[100] Following the receipt of this strong expert evidence, the Defendant twice sought to change its case.

[101] The day after the Defendant's expert published her report dated 31st October 2022, the Defendant applied to make substantive amendments to its pleaded case to plead, *inter alia*, that the Ying Peng Fund held the GCBC Shares on trust for the Defendant (the 'Trust Claim') with the existence of the trust allegedly concealed from the Ying Peng Fund (the 'Amendment Application').

[102] The Amendment Application was heard before me on 11th January 2023. Having heard both sides, I was persuaded that the proposed new case on the 'Trust Claim' for the Defendants was an artificial construct, which myopically ignored the overall reality of the matter, devised by a lawyer or team of lawyers trying to think of ways of saving the Defence now that the forgery on

the share charges had become patent. I dismissed the 'Trust Claim' part of the Amendment Application for a number of reasons, explained in an *ex tempore* oral judgment.

[103] A number of other amendments proposed by the Defendant at the same time were less controversial, at least in the sense whether the Defendant should be permitted to plead them. The Defendant thus filed an Amended Defence and Counterclaim on 9th February 2023, having apparently prepared this amended pleading in November 2022 according to the amended date block, but without inserting a date of that month.

[104] The key point of the amendments was to plead not just that Mr. Xu acted for and/or an authorised representative of Sanpower Group, Ying Peng and each of the Claimant companies in respect of the alleged contractual documents pertaining to these companies, as had been pleaded in the original Defence and Counterclaim, but also that Mr. Xu had apparent or ostensible authority to act for and/or represent those companies. This pleading amendment was done simply by asserting that Mr. Xu had apparent or ostensible authority. As we will come on to, the Claimants submit that such a bald assert is an insufficient way of pleading apparent or ostensible authority.

5. The Re-Amendment Application

[105] The Defendant was not content with making just this amendment however. Two days earlier, on 7th February 2023, the Defendant filed an application to re-amend its Defence and Counterclaim. It is that Re-Amendment Application which is presently before the Court.

[106] The Defendant's Notice of Application for the Re-Amendment Application explained the import of the proposed amendments thus, to:

"2.1 Clarify the Applicant's Defence that even if the signature of Mr Xu Ping or the imprint of the company seal of Ying Peng on the March 2018 Documents were found not to be the same as the specimen signatures of Mr Xu Ping or the specimen company seal of Ying Peng a provided to the parties' handwriting experts, they were affixed on the March 2018 with the knowledge and actual authority (or alternatively, with the ostensible authority) of Mr Xu Ping;

2.2 Explain why the knowledge and acts of Mr Xu Ping are attributable to the Claimants and Ying Peng;

2.3 Highlight the fact that the March 2018 Documents were at all material times presented to GMSC and GMHL by Mr Xu Ping and/or his representative as bearing the genuine signature of Mr Xu Ping and/or the genuine company seal imprint of Ying Peng (with no indication that they were not genuine) which constituted an actual (or alternatively, implied) representation of authority. GMSC [GM BVI] would not have otherwise accepted the March 2018 Documents as being validly executed by the Claimants and Ying Peng;

2.4 Plead the existence of a debtors balance confirmation sheet which came from the audit procedure for the financial statements of GMHL conducted by KPMG Huazhen LLP back in 2020 ("**Debtors Confirmation Sheet**"). Ying Peng (through Ying Peng AMC [a General Partner managing Ying Peng Fund]) had never indicated any disagreement with the statement in the Debtors Confirmation Sheet that the Claimants had charged 78,874,106 ordinary shares of GCBC in favour of GMHL and had further affixed its company seal (along with Mr Yuan Yafei's signature) in confirmation that the information was correct and complete. Thus, as late as June 2020, Ying Peng had continued to represent to GMSC [GM BVI] and/or GMHL that the March 2018 Documents were validly executed; and

2.5 Emphasize, for the foregoing reasons, that the Claimants are estopped from denying the validity, subsistence, and enforceability of the March 2018 Documents."

[107] In short, the line the Defendant wants to take with the amendments proposed by its Re-Amendment Application is that even if the signatures of Mr. Yuan and Mr. Xu and the Ying Peng chop on the Disputed Documents were not genuine, they were applied by or on behalf of Mr. Xu.

6. The Summary Judgment Application

[108] The Claimants filed an application (amended) on 27th February 2023 seeking summary judgment of their Claim and Defence to Counterclaim. In essence, the Claimants seek summary judgment for declarations that the BVI Share Charge and Cayman Share Charge are invalid and of no legal effect and/or are unenforceable, orders restraining the Defendant from enforcing the purported charges and costs of the proceedings.

[109] In terms of substantive grounds, the Claimants adverted to the following:

- (1) The Claimant's handwriting expert concluded that the alleged signature of Mr. Xu on the Disputed Documents, and the alleged Ying Peng chop on the 29th March 2018 Loan Agreement were forgeries, and the Defendant's own hand writing expert concluded that it was 'highly probable' that Mr. Xu's alleged signature on the Disputed Documents were not his and that the alleged Ying Peng chop was not genuine;

- (2) The Defendant's case that Mr. Xu had apparent or ostensible authority has no real prospect of success because:
- a. Any relevant authority would be that of the Ying Peng Fund, which is not a party to these proceedings, and the Ying Peng Fund did not have any knowledge of any of the alleged arrangements which purportedly gave rise to the Share Charges;
 - b. The Defendant knew that Mr. Xu had no authority to bind the Ying Peng Fund and Mr. Xu was not held out as having such authority, because the Defendant had a copy of the Partnership Agreement. The allegation of authority is further negated by the fact that the purported arrangements concerning the consideration were concealed from the Ying Peng Fund and if what the Defendant pleads is true, Mr. Xu would be perpetrating a fraud on the Claimants and the Ying Peng Fund.
 - c. The consideration for the purchase of the GCBC shares had been paid in full by 31st January 2018, as recorded in public announcements by GMHL as well as in an annual report that the consideration had been received from the Ying Peng Fund;

[110] The Claimants relied upon a Sixth Affidavit of Mr. Xiaoyang Chen in support of their application for summary judgment.

[111] In this Affidavit, Mr. Xiaoyang Chen gave extensive evidence. For present purposes, certain main contentions included the following, in essence:

- (1) The handwriting experts' evidence from both sides is that they were certain that the Ying Peng Fund chop was a forgery and that it was either certain (*vide* the Claimants' expert) or highly probable (*vide* the Defendant's expert) that Mr. Xu's alleged signatures had not been his;
- (2) Concerning Mr. Xu's alleged authority, this would be that of the Ying Peng Fund, which is not a party to these proceedings, but which the Defendant acknowledges in its pleading did not have any knowledge of the alleged arrangements which purportedly gave rise to the Share Charges;
- (3) It is inherently unbelievable that anybody would deliberately alter their own signature and company chop in order to later seek to claim that the documents were forged, and the Defendant provides no evidence whatsoever to support this suggestion.
- (4) In parallel proceedings in the Cayman Islands, and in legal proceedings in Hong Kong, the Defendant and the Defendant's associates have demonstrated a propensity to forge,

fabricate and/or manipulate documents, including preparing a forged bank statement, also with a forged chop.

- (5) In relation to the Defendant's Re-Amendment Application, that application relies heavily upon the Audit Confirmation Letter, but (as this Court has already found on 11th January 2023) that letter (if genuine, on which the Claimants reserve their rights) cannot possibly be evidence of the non-payment of the GCBC Shares consideration by Ying Peng Fund in 2018 because it relates to a different debt, a debt purportedly arising from an offshore remittance procedure undertaken in 2020.
- (6) There is no reason why the Defendant's 'new case' could not have been pleaded as part of the first round of pleadings. It is only being raised now because the Defendant more recently engaged a new legal team, and, as this Court remarked on a previous occasion (but as appears to have been transcribed inaccurately) the introduction of this 'new case' has come about because 'a new broom sweeps clean'. The Claimants contend that this is not a good reason or basis for allowing the re-amendment.

[112] The Defendant opposed the Summary Judgment Application vigorously, relying upon

- (1) An Affirmation of Mr. Albert Chen filed on 7th March 2023;
- (2) An Affirmation of one Mr. Anoop Gidwani filed on 7th March 2023;
- (3) An Affirmation of Ms. Fiona Wang filed on 13th March 2023;
- (4) An Affirmation of Ms. Zheng Ting filed on 13th March 2023;
- (5) An Affirmation of Mr. Kam filed on 13th March 2023.

[113] In Mr. Albert Chen's Affirmation filed on 7th March 2023, he iterated the Defendant's narrative concerning the purported production and provision of the Disputed Documents and sought to address the allegations or suggestions of fraud levelled against him in relation to legal proceedings in Cayman legal proceedings.

[114] In Mr. Anoop Gidwani's Affirmation filed on 7th March 2023, Mr. Gidwani purported to give evidence as an expert forensic accountant. He said he was making that Affirmation in opposition to the Summary Judgment Application (a fact which rather obviously detracts from his self-appointed designation as an 'expert', in that the Court expects impartiality, not opposition, from experts, and Mr. Gidwani's Affirmation did not contain the requirements of rule 32, Civil Procedure Rules 2000 ('CPR') pertaining to the provision of expert evidence). He purported to give evidence in his Affirmation of a meeting he claims to have had on 12th

December 2022 at a Japanese restaurant in Hong Kong with an 'audit engagement partner' at KPMG, at which meeting Mr. Gidwani allegedly obtained various oral confirmations from that gentleman, including as to some curiously very precise figures, which tend to support the Defendant's version of financial events. Mr. Gidwani filed an Exhibit with his Affirmation. This did not exhibit any documentary support for the alleged oral communications, but only an undated copy of what purported to be the business card of the 'audit engagement partner'. Mr. Gidwani did not exhibit any notes taken contemporaneously, nor any written confirmation or recapitulation from the 'audit engagement partner'. Nor did Mr. Gidwani give evidence how it was that he could recall such precise financial figures and explanations as he purported to recount, at a meeting which he said took place about 3 months earlier. One is left with nothing more than the alleged recollection of an alleged oral conversation with another person; that is to say, hearsay.

[115] In Ms. Fiona Wang's Affirmation filed on 13th March 2023, she explained that she is an assistant of the administration department at the Beijing office of GMHL. Ms. Wang gave more purported details pertaining to the alleged circumstances of the document handover at Beijing Capital Airport on 28th March 2018. Ms. Wang asserted that she had asked the Unnamed Man whether he was Mr. Xu's representative, to which he allegedly gave an affirmative reply. Other details proffered by Ms. Wang included that the Unnamed Man was 'rather short and thin' and that he was baggage-free. Ms. Wang exhibited what purported to be screenshots of 'chat' or 'text' messages that she had supposedly exchanged with the Unnamed Man. But she did not exhibit more definite material that would readily assist with identifying this anonymous messenger.

[116] In the Affirmation of Ms. Zheng Ting filed on 13th March 2023, Ms. Zheng Ting explained that she was the non-executive director of GMHL from August 2012 to May 2019. She added more detail to the narrative advanced by Ms. Wang about the handover of the Disputed Documents, and she made a short general assertion about allegations of fraud against her in respect of Hong Kong proceedings. This was to the effect that no store should be put by this Court on such allegations as the Hong Kong proceedings are still in their infancy and she is not yet due to file a defence there.

[117] Of more materiality to the present dispute, Ms. Zheng Ting asserted that she 'did not think much of it' when she had (she said) been informed by Mr. Albert Chen that Mr. Xu's

representative would be a person from Sanpower instead of Ying Peng, because, 'to the best of my knowledge and belief, Sanpower did share their staff with Ying Peng for its daily operations'.

[118] The Affirmation of Mr. Kam filed on 13th March 2023 was by far the longest of this suite of evidence filed on behalf of the Defendant.

[119] Mr. Kam began by explaining how he had begun to do business with Mr. Yuan. This part of Mr. Kam's narrative was clearly designed to establish that Mr. Kam regarded Mr. Yuan as the individual behind the Ying Peng Fund.

[120] Mr. Kam related that:

"Nevertheless, in the course of my dealings with Yuan, I found that he generally caused Mr Xu Ping ("**Mr Xu**"), Ms Yang Huaizhen ("**Ms Yang**") and Mr Chen Xiaoyang ("**Mr Chen**") as effectively his alter ego to carry out his mandate for his various businesses."

[121] The point behind that assertion was to embark upon an account whereby Mr. Kam might show that he understood Mr. Xu to have apparent or ostensible authority to sign the 29th March 2018 Loan Agreement on behalf of the Ying Peng Fund.

[122] Indeed, as Mr. Kam stated at paragraph 16 of his Affirmation:

"Yuan's loyal personal aides including, inter alios, Mr. Xu, who came forward to represent Sanpower Group, Ying Peng, Blue Ocean HK (the 1st Claimant herein) and Blue Ocean BVI (the 2nd Claimant herein), have always appeared to be authorised to deal with GM Group and me. In fact, based upon my understanding from Yuan, he indeed acted through Mr Xu, Ms Yang and Mr Chen (as his diehard personal aides) to have a very tight grip over all of his business entities including Sanpower Group and, later, Ying Peng. Hence, I had no plausible ground to believe that Yuan or (with Yuan's endorsement) his personal aides, e.g. Mr Xu, would not have secured any requisite authority to act for Yuan's business entities."

[123] At paragraph 20, Mr. Kam called Ying Peng Fund 'seemingly another of his business entities'.

[124] At paragraph 23(d), Mr. Kam said:

"Mr Xu Ping, being appointed by Ying Peng to be one of the authorised signatories of the Escrow Account, must have had the authority to act for Ying Peng to deal with the Escrow Account."

[125] In relation to the alleged initial agreement for the Disputed Documents, Mr. Kam recounted an oral meeting (at paragraph 35):

“On 27th February 2018, I met with Yuan (who was accompanied by Mr Xu Ping) in Tokyo. In light of Ying Peng’s indebtedness owed to GMSC [GM BVI], it was agreed between the parties that:

- a. Ying Peng would enter into a loan agreement with GMHL (this was subsequently referred to as the 29 March Loan Agreement);
- b. Blue Ocean BVI would enter into a share charge charging the GCBC Shares in favour of GMSC [GM BVI] (this was subsequently referred to as the Cayman Share Charge);
- c. Blue Ocean HK would enter into a share charge charging its shares in Blue Ocean BVI in favour of GMSC [GM BVI] (this was subsequently referred to as the BVI Share Charge);
- d. Mr Yuan would personally guarantee the payment obligation of Ying Peng under the 29 March Loan Agreement; and
- e. Mr Xu Ping (for Ying Peng) and Mr Albert Chen (for GMSC) were to deal with the actual logistics of what was agreed at this meeting.”

[126] Mr. Kam developed his contentions thus:

“45. ... I understand from Chen 6th that the Claimants have attempted to suggest that we should have known of Mr Xu’s lack of authority to execute or to procure the execution of the BVI Share Charge and the Cayman Share Charge. In this connection, Chen 6th refers to GMHL’s potential investment in Ying Peng in about January 2018 and in the course of such potential investment, GMHL was given a copy of Ying Peng’s partnership agreement and we should have therefore realised about the operations of Ying Peng and how and in what circumstances that Mr Xu would or would not be authorized to execute documents for Ying Peng.

46. The above suggestion by Chen 6th is wholly misleading.

47. To the best of my recollection and belief, what the Claimants are referring to are acquisitions that never materialised which is why GMHL had not even begun to undertake any legal or otherwise due diligence for the said acquisition. Rather, the announcement was made so to comply with the rules of the Hong Kong Stock Exchange. That being so, why would I, being a businessman rather than a lawyer, commit my time and resources into studying Ying Peng’s partnership agreement?

48. However, for the sake of understanding the Claimants arguments, I did read the announcement that GMHL had issued on 4th February 2018 to refresh my memory as to what it stated. ... At page 13, it merely stated that “*Decisions of the Investment Committee must be passed by three or more of the members except that, among other things, changing the total capital of the Partnership, classes of partners and the operation period of the Partnership must be approved by all members unanimously.*” How could I have possibly known that Mr Xu Ping did not obtain the approval of the Investment Decision Committee when committing Ying Peng to these documents? Furthermore, how does this affect our understanding of Mr Xu Ping’s authority in committing the Claimants to the BVI Share Charge and the Cayman Share Charge when the partnership agreement of Ying Peng had nothing to do with the Claimants at all?

49. In any event, as deposed above, Yuan has always deployed his personal aides including Mr Xu, Ms Yang and Mr Chen to run his conglomerate businesses. As such, I had every reason to believe that Yuan would not have encountered any problems at all to pass any decision-making progress within Ying Peng in accordance with his wishes.

50. As such, the fact remains that Mr Yuan and Mr Xu, to my mind, had the authority to bind Ying Peng and/or the Claimants to the March 2018 Documents.”

[127] Mr. Kam then moved off the subject of Mr. Xu’s authority to add details about the KPMG Audit Confirmation Letter. He gave evidence that there were three such letters, that Mr. Yuan signed one of them on behalf of Ying Peng, and that one such letter makes specific reference to the fact that Blue Ocean had executed the Cayman Share Charge.

[128] Mr. Kam then proceeded to give evidence that he ‘gradually discovered a whole trail of Mr Xu Ping and Yuan’s misconducts.’ These, included, said Mr. Kam, a tendency on the part of Mr. Yuan to deny his own signatures, and, on the part of Mr. Xu, that Mr. Xu had been the ‘true culprit’ behind the forged bank statement deployed in the Cayman proceedings.

[129] As to these allegations, a reading of the translation of the judgment dated 12th August 2022 of the Beijing High People’s Court in case no. (2021) Jing Min Xia Zhong No. 172 indicates that Mr. Yuan had not directly denied the authenticity of his purported signature, but claimed not to have recalled signing the document in question in light of the fact that he frequently signed documents and that he knew a number of people with a similar name as his. This is very different from either alleging that his own signature had been falsified or disowning his own true signature. This also falls far short of establishing a ‘tendency’. This judgment does not, on its face, bear out the negative inference sought by Mr. Kam to be extracted therefrom.

[130] Moreover, Mr. Kam does not support his allegation that Mr. Xu was the ‘true culprit’ behind the forgery of the bank statement deployed by Mr. Kam’s side in the Cayman legal proceedings; it is a bald assertion.

[131] Mr. Kam explained his general overall purpose:

“All in all, the point I’m trying to make is that this Court should not ignore Yuan and Mr. Xu Ping’s questionable conduct given that these proceedings are for summary judgment. As it transpires, none of the issues is so clear cut that this Court can safely say that it is able to come to a judgment conclusively without the benefit of a trial.”

- [132] Mr. Xu provided evidence in reply, by way of a Second Affidavit.
- [133] Mr. Xu gave evidence that
- “I did not have the actual authority to execute documents on behalf of the Ying Peng Fund without the unanimous approval of all members of the IDC. Further, I do not believe that I, or the Ying Peng Fund, has ever represented or held me out as having authority to bind the Ying Peng Fund. “
- [134] He also gave evidence that:
- “... the purpose of the Ying Peng Fund was to acquire the GCBC Shares and as a private equity fund was established as an investment vehicle and is expressly prohibited from entering into loan facility arrangements or providing any guarantees.”
- [135] Mr. Xu confirmed that he had attended meetings in Tokyo with Mr. Kam and others in February 2018, but that those were at celebratory meals, at which none of the things supposedly discussed as described by the Defendant’s side occurred.
- [136] Mr. Xu also asserted that:
- “The Ying Peng Fund did not know about the purported Loan Agreement dated 29 March 2018. There was no discussion about such an agreement by the Ying Peng Fund’s IDC.”
- [137] Mr. Xu also confirmed that he attended an EGM of GCBC in Hong Kong on 16th March 2018, but denied that he had any recollection to being handed any documents other than those relevant to the EGM. Mr. Xu however categorically denied meeting Mr. Albert Chen in Hong Kong on 19th March 2018, as being a logistical impossibility, since he was over 1,100 kilometres away in Nanjing that day.
- [138] Mr. Xu did not rule out having provided some documents from Sanpower to GMHL on 28th March 2018, and conceded to having ‘some recollection’ of arranging for ‘something personal’ for Mr. Yuan to be delivered to Mr. Kam, but he claims he never saw what the items in question were.
- [139] Mr. Xu also commented upon the alleged reliance on oral meetings and in person exchanges for the production of the Disputed Documents. Mr. Xu stated:
- “I can confirm that this is extremely unusual – agreements of this nature and significance would have generated a huge amount of email correspondence and exchange of drafts

for negotiations. I would also have involved legal counsel for this purpose as well as in house legal counsel.”

- [140] Mr. Xu decried allegations that he had forged the bank statement used in the Cayman proceedings as ‘blatant lies and absolute nonsense’. He explained that in the positions he occupied (or rather, did not occupy), he had had no access at all to any of GCBC's bank accounts and that he did not even know the company in question had an account with that particular bank.
- [141] Mr. Xiaoyang Chen also produced further evidence, an Eighth Affidavit.
- [142] Mr. Xiaoyang Chen explained with reference to a structure chart that there is a relationship between Sanpower (and indeed Mr. Yuan) and the Ying Peng Fund’s Executive General Partner (‘Ying Peng AMC’) but that Mr. Yuan does not himself have any authority to act for, nor does he hold any position at, Ying Peng AMC or the Ying Peng Fund.
- [143] Mr. Xiaoyang Chen explained that in addition, the Ying Peng Fund Partnership Agreement specifically carves out certain matters that would require decisions by all Partners of the Ying Peng Fund, particularly in respect of entering into a loan or charge of assets, which are exactly the subject matter of the purported Disputed Documents.
- [144] Mr. Xiaoyang Chen gave evidence that the Defendant was fully aware that the Ying Peng Fund is a private equity fund raised in accordance with the Partnership Agreement, and is under the joint management of Ying Peng AMC and a company called Guotai Junan Haojing (‘Guotai Junan’) as early as in 2016, as reflected in recitals of the GCBC SPA between the Defendant and the Ying Peng Fund for acquisition of the GCBC Shares signed in December 2016. Moreover, in the GCBC SPA, the Defendant, as Seller, specifically requested the Ying Peng Fund, as Buyer, to provide the Partnership Agreement to the Defendant (per Article 4.3 (4) of the GCBC SPA).
- [145] Mr. Xiaoyang Chen gave evidence that in addition to the Partnership Agreement, Ying Peng AMC and Guotai Junan signed a Management and Operation Agreement of the Ying Peng Fund on 12th December 2016, based on which Ying Peng AMC and Guotai Junan manage the Partnership. The Partnership Agreement and the Management and Operation Agreement

constitute the key governance documents ('the Governing Documents') of the Ying Peng Fund. When carrying out business for the Ying Peng Fund, Ying Peng AMC is subject to the restrictions set out in the terms of the Governing Documents, in addition to those prescribed by Chinese laws and regulations in respect of managing private equity funds. Mr. Xiaoyang Chen asserted that the Defendant had full knowledge of the Ying Peng Fund's Governing Documents no later than January 2018, and explained in detail with reference to documents why that was so.

- [146] Mr. Xiaoyang Chen moreover gave evidence concerning the purported KPMG Audit Confirmation Letter, to the effect that (a) the Defendant has asserted through Senior Counsel that the Defendant would no longer rely upon that letter in its intended pleaded case, but would still rely upon it in evidence; (b) that KPMG were unwilling to give any evidence in the matter; and (c) that the Defendant had not disclosed any contemporaneous correspondence with KPMG, nor documentation how this alleged indebtedness arose.
- [147] The Claimants also filed an Affidavit of a Mr. Jonathan Stroud to reply to the First Affirmation of Mr. Albert Chen. Mr. Stroud is a Cayman lawyer. He concentrated in his Affidavit on the circumstances pertaining to the allegedly forged bank statement deployed in the Cayman legal proceedings, in essence to point the finger of suspicion and blame back at Mr. Albert Chen for that alleged forgery.
- [148] The Claimants also put into evidence for the purposes of the present applications the Articles of Association of both Claimant companies, together with the Annual Report for GMHL for its financial year ending 31st March 2018.

7. Discussion

- [149] The way the Summary Judgment Application and the Re-Amendment Application proceeded was to treat the re-amendments as already in the pleadings. On that basis, the Claimants maintained that they would still be entitled to summary judgment. As stated by the Claimants:
- "There is no dispute for the test to be applied. The test for summary judgment is the reverse of the 'merits' test to be applied on amendment. For the purposes of the summary judgment application the Court can treat the proposed amendments as 'in the pleading'."

[150] The Claimant's starting point with their Summary Judgment Application was to state the following as a synopsis of the relevant law.

"11. The test for summary judgment is well-established. The application for summary judgment is made pursuant to ECSC Civil Procedure Rules r. 15.2(1)(a) and (b) on the basis that the Defendant has no real prospect of successfully defending the Claimants' claim and has no real prospect of succeeding on its Counterclaims.

12. In *St Lucia Motor & General Insurance Co Ltd v Peterson Modeste* ([2010] ECSCJ No 8 at [21]) in the judgment of George-Creque JA (now Pereira CJ) the test was explained as follows: (This test was followed by Jack J [Ag.] in his recent decision in *Zhao Long v Endushantum Investments Co Ltd* BVIHC (COM) 2017/0151 at [35] (Judgment 17 March 2022))

"CPR 15.2 says in essence that the court may give summary judgment on the claim or on a particular issue if it considers that (a) a claimant has no real prospect of succeeding on a claim or (b) a defendant has no real prospect of defending the claim or issue..."

*The principle...may be stated thus: Summary judgment should only be granted in cases where it is clear that a claim on its face cannot be sustained, or in some other way is an abuse of the process of the court. What must be shown in the words of Lord Woolf in *Swain v Hillman* is that the claim or defence has no "real" (i.e. realistic as opposed to fanciful) prospect of success. It is not required that a substantial prospect of success be shown. Nor does it mean that the claim or defence is bound to fail at trial. From this it is to be seen that the court is not tasked with adopting a sterile approach but rather to consider the matter in the context of the pleadings and such evidence as there is before it and on that basis to determine whether, the claim or the defence has a real prospect of success. If at the end of the exercise the court arrives at the view that it would be difficult to see how the claimant or defendant could establish its case then it is open to the court to enter summary judgment."*

13. The test for summary judgment in the BVI and England are the same (In England, the court may grant summary judgment if the claimant has no real prospect of succeeding on the claim and there is no other compelling reason why the case should be disposed of at trial; CPR 24.2) and there is a well-known summary of the legal principles in the judgment of Lewison J (as he then was) in *Easyair Ltd v Opal Telecom Ltd*. ([2009] EWHC 339(Ch) at [15])"

[151] The Defendant broadly concurred with these principles and added:

"24. ...a summary of the legal principles concerning summary judgment applications can usefully be found in Wallbank J's judgment in ***Magwitch LLC v Pusser's West Indies Limited*** BVIHCM2017/0006 and ***International Trading Holding Co.Ltd & Anor v Med Trading Company Limited*** BVIHCM 2019/0061.

25. Wallbank J, approving and citing the English authorities ***Easyair Limited v Opal Telecom Limited*** [2009] EWHC 399 (CH), in his judgment in *Magwitch*, as well as ***Doncaster Pharmaceutical Group Ltd v Bolton Pharmaceutical Co 100 Ltd*** [2007]

FSR 3 in his judgment in *International Trading Holding*, stated that the correct approach on summary judgment applications was as follows:-

i) The summary disposal of a “rubbishy” defence is in the interests of justice. The Court should be alert to the defendant who seeks to avoid summary judgment by making a case look more complicated or difficult than it really is. Likewise, the Court also has to guard against the “cocky” claimant who confidently presents the factual and legal issues as simpler and easier than they really are: *Doncaster Pharmaceutical Group Ltd v Bolton Pharmaceutical Co 100 Ltd* [2007] FSR 63;

ii) Considerations of procedural justice must be kept in proper perspective to avoid a serious risk of injustice: *Doncaster Pharmaceutical Group Ltd v Bolton Pharmaceutical Co 100 Ltd*

iii) The Court must consider whether the claimant has a “realistic” as opposed to a “fanciful” prospect of success: *Swain v Hillman* [2001] 2 All ER 91;

iv) A “realistic” claim is one that carries some degree of conviction. This means a claim that is more than merely arguable: *ED & F Man Liquid Products v Patel* [2003] EWCA Civ 472 at [8];

v) In reaching its conclusion the court must not conduct a “mini trial”: *Swain v Hillman*;

vi) This does not mean that the court must take at face value and without analysis everything that a claimant says in his statements before the Court. In some cases it may be clear that there is no real substance in factual assertions made, particularly if contradicted by contemporaneous documents: *ED & F Man Liquid Products v Patel* at [10];

vii) However, in reaching its conclusion the court must take into account not only the evidence actually placed before it on the application for summary judgment, but also the evidence that can reasonably be expected to be available at trial: *Royal Brompton Hospital NHS Trust v Hammond (No.5)* [2001] EWCA Civ 550;

viii) Although a case may turn out at trial not to be really complicated, it does not follow that it should be decided without the fuller investigations into the facts at trial than is possible or permissible on summary judgment. Thus the court should hesitate about making a final decision without a trial, even where there is no obvious conflict of fact at the time of the application, where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case: *Doncaster Pharmaceutical Group Ltd v Bolton Pharmaceutical Co 100 Ltd*.”

[152] The first issue for determination in the summary judgment application has been referred to as the forgery issue. As framed by the Claimants, this concerns whether the Defendant has a real prospect of succeeding in establishing that the signatures of Mr. Xu on the Share Charges and the 29th March Loan Agreement and the Ying Peng Fund Chop on that agreement are genuine.

- [153] Determination of this issue is relatively straight-forward. Both sides instructed handwriting experts, who both appear to have analysed the matter of potential forgeries thoroughly and scientifically. Both came to similar rational and well supported conclusions. There was very little between the experts in relation to their conclusions. The Claimants' expert expressed what was in effect certainty that the signatures and chop were not genuine. The Defendant's expert concluded that it was 'highly probable' that the signatures were not genuine.
- [154] This evidence is so strong that there is no real prospect of a claim succeeding that these signatures and the chop were genuine. It is clear that a claim to this effect cannot be sustained.
- [155] The Claimants are thus entitled to summary judgment on this, the forgery issue, as framed by the Claimants.
- [156] The Defendant takes a position that it does not matter whether or not those signatures and the chop were genuine. The Defendant frames the dispute in terms of authority. Thus, the Defendant argued that
- "D has identified the two main triable issues as follows: -
- 29.1. First, even if the signatures on the BVI Share Charge and the Cayman Share Charge are found not to be the same as the specimen signatures of Xu as provided to the handwriting experts for these proceedings (which in the light of the expert evidence D must accept), did Xu nevertheless authorize and/or instruct someone to sign in his name and deliver the BVI Share Charge and the Cayman Share Charge to GMSC [GM BVI] thereby making them just as legally binding on Blue Ocean BVI and/or Blue Ocean HK as if he had signed and delivered them himself? ("the Execution Issue"); and
- 29.2. Second, did Xu have the actual authority to agree to and deliver the BVI Share Charge on behalf of Blue Ocean HK and the Cayman Share Charge on behalf of Blue Ocean BVI? If not, is D entitled to rely on the apparent authority of Xu on the basis that Xu was a director of Blue Ocean HK and Blue Ocean BVI when both the BVI Share Charge and the Cayman Share Charge were executed? ("the Authority Issue")
30. For reasons stated hereinbelow, it is submitted that both issues raise potentially difficult questions of both fact and law, which, as to the factual issues, largely turn on the credibility of the parties' respective witnesses thereby making it wholly inappropriate for them to be dealt with by way of summary judgment."
- [157] The Claimants' position in relation to the 'Execution Issue' was that the Defendant's 'evidence looked at in relation to the pleading and the Conyers documents is inconsistent, confused, contradictory and vague'. That, though, of course does not of itself satisfy the summary

judgment test of a claim which has no reasonable prospect of success, and indeed the ordinary trial preparation process could see such perceived deficiencies to be clarified.

[158] The Claimants' position is moreover that the outcome of the 'Execution Issue' does not matter. That is because if the Defendant cannot show Mr. Xu had authority to sign the documents, and if the Defendant cannot show that Ying Peng Fund held out Mr. Xu as having authority to sign the 29th March 2018 Loan Agreement on its behalf, then the Defendant has no reasonably arguable defence. That, in a nutshell, is the straight and short way to the heart of this case which the Claimants have identified.

[159] The Claimants put the fundamental issue thus:

“21. The first question is whether the Claimants are bound by the Share Charges notwithstanding the forgeries. The subsidiary question is whether the 29 March Loan Agreement creates an enforceable obligation against Ying Peng such that it can be the subject of the BVI and Cayman Share Charges.

22. Ying Peng is not a party, but if the 29 March Loan Agreement, bears, as it does, a forged chop and signatures, then the existence of the Share Charges turns on the validity of that agreement, because otherwise they are nullities.”

[160] The Claimants observed that the Defendant pleads at paragraph 25.2 of the proposed Re-Amended Defence that 'at all material times' Mr. Xu was 'a member of the investment decision committee and authorised representative of Ying Peng'.

[161] That, submitted the Claimants, was not sufficient, in fact or in law, to defeat an application for summary judgment.

[162] In relation to the law concerning authority, the Claimants rely upon well settled principles. A general explanation of these was given by Denning LJ in the English Court of Appeal case of **Hely-Hutchinson v Brayhead**:⁴

“I need not consider at length the law on the authority of an agent, actual, apparent, or ostensible. That has been done in the judgments of this court in *Freeman & Lockyer v. Buckhurst Park Properties (Mangal) Ltd.* It is there shown that actual authority may be express or implied. It is *express* when it is given by express words, such as when a board of directors pass a resolution which authorises two of their number to sign cheques. It is *implied* when it is inferred from the conduct of the parties and the

⁴ [1968] 1 Q.B. 549 at 583 (footnotes omitted).

circumstances of the case, such as when the board of directors appoint one of their number to be managing director.

They thereby impliedly authorise him to do all such things as fall within the usual scope of that office. Actual authority, express or implied, is binding as between the company and the agent, and also as between the company and others, whether they are within the company or outside it.

Ostensible or apparent authority is the authority of an agent as it *appears* to others. It often coincides with actual authority. ... But sometimes ostensible authority exceeds actual authority. For instance, when the board appoint the managing director, they may expressly limit his authority by saying he is not to order goods worth more than £500 without the sanction of the board. In that case his actual authority is subject to the £500 limitation, but his *ostensible* authority includes all the usual authority of a managing director.

The company is bound by his ostensible authority in his dealings with those who do not know of the limitation. He may himself do the "holding-out." Thus, if he orders goods worth £1,000 and signs himself "Managing Director for and on behalf of the company," the company is bound to the other party who does not know of the £500 limitation, see *British Thomson-Houston Co. Ltd. v. Federated European Bank Ltd.*, which was quoted for this purpose by Pearson L.J. in *Freeman & Lockyer*.

[163] The effect of ostensible or apparent authority was explained in the English Court of Appeal case of **Freeman & Lockyer v. Buckhurst Park Properties (Mangal) Ltd.**⁵ thus:

"An " apparent " or " ostensible " authority, on the other hand, is a legal relationship between the principal and the contractor created by a representation, made by the principal to the contractor, intended to be and in fact acted upon by the contractor, that the agent has authority to enter on behalf of the principal into a contract of a kind within the scope of the "apparent" authority, so as to render the principal liable to perform any obligations imposed upon him by such contract. To the relationship so created the agent is a stranger. He need not be (although he generally is) aware of the existence of the representation but he must not purport to make the agreement as principal himself. The representation, when acted upon by the contractor by entering into a contract with the agent, operates as an estoppel, preventing the principal from asserting that he is not bound by the contract. It is irrelevant whether the agent had actual authority to enter into the contract.

...

In ordinary business dealings the contractor at the time of entering into the contract can in the nature of things hardly ever rely on the "actual" authority of the agent. His information as to the authority must be derived either from the principal or from the agent or from both, for they alone know what the agent's actual authority is. All that the contractor can know is what they tell him, which may or may not be true. In the

⁵ [1964] QBD 480 at 503 (Diplock LJ).

ultimate analysis he relies either upon the representation of the principal, that is, apparent authority, or upon the representation of the agent, that is, warranty of authority.

The representation which creates "apparent" authority may take a variety of forms of which the commonest is representation by conduct, that is, by permitting the agent to act in some way in the conduct of the principal's business with other persons. By so doing the principal represents to anyone who becomes aware that the agent is so acting that the agent has authority to enter on behalf of the principal into contracts with other persons of the kind which an agent so acting in the conduct of his principal's business has usually "actual" authority to enter into.

...

If the foregoing analysis of the relevant law is correct, **it can be summarised by stating four conditions which must be fulfilled to entitle a contractor to enforce against a company a contract entered into on behalf of the company by an agent who had no actual authority to do so. It must be shown:**

(1) that a representation that the agent had authority to enter on behalf of the company into a contract of the kind sought to be enforced was made to the contractor;

(2) that such representation was made by a person or persons who had "actual" authority to manage the business of the company either generally or in respect of those matters to which the contract relates;

(3) that he (the contractor) was induced by such representation to enter into the contract, that is, that he in fact relied upon it; and

(4) that under its memorandum or articles of association the company was not deprived of the capacity either to enter into a contract of the kind sought to be enforced or to delegate authority to enter into a contract of that kind to the agent." (Emphasis added.)

7.1 Mr. Xu's alleged actual authority

[164] The Defendant's position on Mr. Xu's alleged actual authority was summarized in its skeleton thus:

"As a matter of law, irrespective of Xu's actual authority, D was entitled to rely on his apparent authority as director of the various entities in the absence of evidence to establish that D was acting dishonestly and well knew that Xu in signing the documents (or purporting to have done so) was himself acting dishonestly and beyond his authority. There is no such evidence. Even if there were, such a finding is one which it is not open to the Court to make on conflicting evidence on an application for summary judgment."

- [165] The Claimant's position started by remarking **that no facts or matters are pleaded that support a case that Mr. Xu had actual authority of the Ying Peng Fund to execute the 29th March 2018 Loan Agreement** or of the Blue Ocean entities to execute the Share Charges.
- [166] That is an important omission. A litigant who seeks summary judgment does not seek some kind of general finding that the court prefers its case to that of the other side, thereby vindicating the litigant's rights. The applicant for summary judgment does so with respect to averments set out in pleadings, the evidence before the court, and any likely further evidence that may be adduced before the matter were to come on for trial. Whilst it is true that averments made in pleadings can be fleshed out in witness statements,⁶ at the same time CPR 8.7(1) requires that '[t]he claimant must include in the claim form or in the statement of claim a statement of all the facts on which the claimant relies' and CPR 10.5(1) similarly requires that '[t]he defence must set out all the facts on which the defendant relies to dispute the claim.'
- [167] This omission means that no factual case has been advanced by the Defendant setting out why Mr. Xu is asserted to have had actual authority to bind the Ying Peng Fund to the terms of the 29th March 2018 Loan Agreement. The Defendant had simply asserted that Mr. Xu was the authorized representative of, *inter alia*, Ying Peng Fund. That is a bald, general assertion, not connected to any authority to execute contracts on behalf of the Ying Peng Fund. Where no factual case has been advanced, it cannot sensibly be said that upon its face such a claim is sustainable, or in other words, that the claim has a reasonable prospect of success. One can ask rhetorically, what could a respondent to a summary judgment application point to in such circumstances to persuade a court that he does have a reasonable prospect of success despite his omission? It is difficult to see what; and if he can, why did he not include the explanation in his pleadings as required by the CPR? It should thus be understood that a party who does no more than make bald assertions cannot expect to avoid summary judgment thereby.
- [168] If that omission is here not enough to satisfy the summary judgment test in relation to Mr. Xu's alleged actual authority, of Mr. Xu to execute loan agreements on behalf of Ying Peng, there is no evidence Mr. Xu had such authority.

⁶ See *East Caribbean Flour Mills Limited v Ormiston Ken Boyea* Civil Appeal No. 12 of 2006 (unreported, delivered 16th July 2007 at paragraphs 43 and 44 (Barrow JA).

[169] There is, moreover, very considerable evidence that he did not have such authority. The Claimants' analysis in this regards starts with Ying Peng's constitutional documents:

"69. ... The first is the Partnership Agreement. This sets out the corporate governance structure of the Partnership:

a. This agreement provides that the Executive Partner has the right to dispose of the affairs of the Ying Peng Fund, but is not permitted to engage in debt financing or to provide external guarantees in the name of the Partnership. (Article 19.3)

b. The Executive Partner and the Manager, Ying Peng, are responsible for the execution of the partnership affairs and members of the Investment Decision Committee are appointed to participate in the investments decisions. (Article 20)

c. There are five entities that are members of the Investment Decision Committee with equal voting rights. (Article 23.2)

d. Mr Xu is one person on the Investment Decision Committee with four others.

70. The Defendant had knowledge of the Partnership Agreement. Mr Kam's protestations that he did not do due diligence on this issue are irrelevant (and also incredible) – he had the document if he wished to know the authority of Mr Xu. In January 2018, Golden Meditech tried to acquire an interest in the Partnership and entered into the Framework Agreement and made a public announcement to the Hong Kong Stock Exchange on 4 February 2018.

71. It is evident that the Defendant knew that Mr Xu had no personal authority to act under the terms of the Partnership Agreement and hence that the constitution of Ying Peng did not provide Mr Xu with any authority whatsoever, whether by his position as a member of the Investment Decision Committee or otherwise.

72. The Defendant, in its skeleton argument (paragraph 9) describes Mr Xu "as the sole representative of Ying Peng". The Defendant has variously claimed that Mr Xu was the "sole representative" or "authorised representative" of Ying Peng. *There is no evidence for this save in respect of the Escrow Agreement where Mr Xu is described at the "Authorised Representative" of Ying Peng AM.*

73. It is clear that "Authorised Representative" is a term of art in the Escrow Agreement. Beyond that, there is no evidence that Mr Xu is held out as having any authority on behalf of Ying Peng. The power to be the gatekeeper on behalf of Ying Peng in respect of the Escrow Agreement does not suggest any actual, usual or ordinary authority to enter into obligations on behalf of Ying Peng. The effect of being the authorised representative in relation to the Escrow Agreement was to make Mr Xu a trustee of the purpose trust created by that agreement; Mr Xu was expressly not dealing with the property of Ying Peng. Appointing a trustee over an asset does not clothe that person with authority to incur liabilities on behalf of the beneficiary and nor does it amount to a representation that the trustee has any authority beyond the proper performance of the trust."

[170] The Claimants explained that Mr. Xu did have various representative capacities **for the purpose of executing the Escrow Agreement, and to act as the authorised signatory for things done by Ying Peng Fund pursuant to that agreement**, specifically dealing with the funds held in escrow and applying Ying Peng Fund's seal for that purpose, and he was also the person named as the person to whom notice should be given to Ying Peng Fund as the purchaser under the GCBC SPA. But, continued the Claimants, **Mr. Xu did not have any general authority to represent Ying Peng Fund. He was not a partner or even a general partner.** The Claimants submitted that Mr. Xu had no authority under the Partnership Agreement and no authority was delegated to him. **Indeed, the defendant points to no evidence that such authority had been delegated to Mr. Xu.**

[171] The Claimants' contention that Mr. Xu did not have any general authority to cause Ying Peng Fund to enter into transactions such as the 29th March 2018 Loan Agreement is supported by the underlying documents in evidence, and there is none pointing the other way. The Defendant's assertion that Mr. Xu had actual authority is incompatible with Ying Peng's Partnership Agreement, which had been available to the Defendant's side.

[172] In my respectful judgment, on the pleadings and the evidence, the Defendant's case that Mr. Xu had actual authority to bind Ying Peng to the 29th March 2018 Loan Agreement is unsustainable. The net result must be for the Court to record a finding that Mr. Xu had no actual authority to execute that purported loan agreement.

7.2 Mr. Xu's apparent or ostensible authority

[173] That leads to the next question, whether Mr. Xu had apparent or ostensible authority to do so.

[174] The Defendant's case suffers from a number of fundamental difficulties in this regard.

[175] The Defendant needs to show that it satisfies the four conditions identified by Diplock LJ in **Freeman & Lockyer v. Buckhurst Park Properties (Mangal) Ltd.**⁷

⁷ [1964] QBD 480 at 503 (Diplock LJ).

[176] In respect of the first two of these conditions the Defendant does not do so. The Defendant does not show that:

- (1) a representation that the agent (of Ying Peng, Mr. Xu) had authority to enter on behalf of the company (Ying Peng Fund) into a contract of the kind sought to be enforced was made to the contractor (the Defendant); nor
- (2) that such representation was made by a person or persons who had 'actual' authority to manage the business of the company (Ying Peng Fund) either generally or in respect of those matters to which the contract relates;

[177] As submitted by the Claimants, Mr. Xu was not held out by Ying Peng Fund as having authority to enter into loan agreements or by the Claimant companies to provide charges.

[178] Moreover, importantly, submitted the Claimants, there was no allegation of holding out of Mr. Xu on the pleadings. The Defendant's pleadings simply say he was a director of Blue Ocean HK and Blue Ocean BVI.⁸ Such holding out as the Defendant relies upon amounts to a vague and general impression of authority exuded by Mr. Yuan and Mr. Xu by way of alleged general conduct over a number of years.

[179] Before considering the Defendant's failure to bring themselves within the conditions identified by Diplock LJ more closely, there is a particular phrase used by Diplock LJ in his summary of the law on ostensible or apparent authority in the passage quoted above from **Freeman & Lockyer**. Diplock LJ was being very specific that the representation of authority is to be a representation that the agent had authority to enter on behalf of the company a contract '**of a kind within the scope of the 'apparent' authority**'. Diplock LJ specified this **five times** in the short passage set out above. These are clearly not throw-away words that can be ignored.

[180] The Defendant must therefore show that there had been a representation, by someone who had actual authority to manage the business of Ying Peng (which excludes Mr. Xu, because he had no actual authority to do so), that Mr. Xu had authority to execute the 29th March 2018 Loan Agreement as a contract **of a kind within the scope of Mr. Xu's 'apparent' authority**.

⁸ At paragraph 25.3 of the proposed Re-Amended Defence & Counterclaim.

- [181] That means that the Defendant has to show that the 29th March 2018 Loan Agreement was a contract of a kind coming within the scope of Mr. Xu's 'apparent' authority. The Defendant therefore first has to show what the scope of Mr. Xu's 'apparent' authority is.
- [182] This is where the Claimant's distinction comes in between Mr. Xu having a general authority (they say he does not) and delimited authority in the terms of the Ying Peng Partnership Agreement and the GCBC SPA documents, including the Escrow Agreement. This distinction is, as Diplock LJ stressed, fundamental. The Defendant **can** show that Mr. Xu had representative authority to act on behalf of Ying Peng in respect of the things those documents specify. But the Defendant does not, and it appears **cannot**, show that a loan agreement such as the 29th March 2018 Loan Agreement was a contract of a kind within the scope of Mr. Xu's 'apparent' authority as spelled out by those formal and uncontroversial documents. The documentary evidence strongly points the other way. It is, in my respectful judgment unlikely that further (genuine) documentary evidence would emerge prior to a trial of the matter to span this divide.
- [183] The upshot of this is that the Defendant does not fulfil the first of the four conditions for establishing Mr. Xu's alleged apparent or ostensible authority. That itself is fatal.
- [184] But the Defendant's problems do not stop there.
- [185] The Defendant does not fulfil the second condition either.
- [186] The Defendant does not adduce evidence to show that there had been any representation by anyone who had 'actual' authority to manage the business of Ying Peng. The Defendant's evidence – given by Mr. Kam – was to say that the Ying Peng Fund was one of Mr. Yuan's businesses and that during the course of his (Mr. Kam's) dealings with Mr. Yuan, he 'found that he generally caused Mr Xu Ping ... [to act] ... as effectively his alter ego to carry out his mandate for his various businesses'.
- [187] Quite apart from the fact that Mr. Kam leaves it entirely unparticularized and vague how he 'found' this to be the case, Mr. Kam does not come close to showing that Mr. Yuan had actual authority to do anything on behalf of the Ying Peng Fund.

[188] Although the Defendant points to the existence of a KPMG debt confirmation audit letter addressed to Ying Peng and Mr. Yuan and ostensibly signed by Mr. Yuan as an authorized signatory under or over the chop/seal of Ying Peng AMC,⁹ the Defendant's learned Counsel did not rely upon this (at least, with any conviction) as evidence of a representation of Mr. Yuan's authority. Indeed, as the Claimants observed, any such representation was not made to the Defendant but to KPMG, and the exchange was between KPMG and Ying Peng and/or Ying Peng AMC without the Defendant being party to that exchange. The letter also leaves it entirely unspecified what the authority of Mr. Yuan was.

[189] Actual authority is a legal concept, which is satisfied by the fulfilment of specific criteria, not by a set of vague impressions in the mind of some third party. Actual authority, like a court's jurisdiction, is something one has or does not have, in accordance with objectively ascertainable facts and criteria. Whether one has, or does not have, actual authority does not depend upon the vagaries of other people's perceptions.

[190] Moreover, this is not a case where Mr. Yuan is the sole underlying beneficial owner, sole member and sole director of the Ying Peng Fund, such that it might be probable that 'in reality' the entity is his *alter ego* and that 'in reality' he has actual authority to conduct its business.

The Defendant submitted that:

"Ying Peng AMC is wholly owned by Sanpower Nanjing which is, in turn, wholly owned by Sanpower Group. Yuan therefore, by virtue of his 97.5% shareholding in Sanpower Group, controls Ying Peng AMC. In fact, Ying Peng AMC's corporate particulars (which is extracted from government registries that is made publicly available on the internet) shows that Yuan is stated to be the "Actual Controller" of Ying Peng AMC.

iii. This therefore proves that it is actually Yuan who calls the shots for Ying Peng."

[191] Unfortunately for the Defendant, this argument and these facts (assuming them to be true for present purposes) do not establish that Mr. Yuan had actual authority, in the legal sense, to do anything on behalf of Ying Peng AMC or the Ying Peng Fund. It goes no further than to indicate that Mr. Yuan could cause to be changed the persons or entities who do have actual authority, which is not the same thing. The weakness in the Defendant's argument is immediately and inherently betrayed by the imprecise and colloquial reference to 'calls the shots', an imprecise term capable of referring to a number of different things.

⁹ At Bundle C (Part 2) page C/1091.

[192] It is also axiomatic that 97.5% is not 100%. It leaves a minority interest. Whilst clearly such a minority could be overridden in terms of voting power on decisions, the Defendant adduced no evidence that the interests of such a minority can simply be ignored.

[193] The Claimants argue that such a simplistic view is anyway not right. In addition to the Claimants' evidence being that the Ying Peng Fund is a limited partnership consisting of Limited Partners (comprising various financial investors) and General Partners (which conduct the management), and that Mr. Yuan does not himself have any authority to act for, nor does he hold any position at, Ying Peng AMC or the Ying Peng Fund, the Claimants pointed to the following in contending that Ying Peng Fund is not a 'Yuan entity':

"8. ... It is clear from the Appendix to the Partnership Agreement that Mr Yuan, through his interest in Sanpower, only has a 15.31% equity interest in Ying Peng

9. Second, Ying Peng Asset Management Co., Ltd (Ying Peng AMC) can only act as General Partner in good faith in the interests of Ying Peng (...see Article 9.5.2(2)).

10. Mr Kam acknowledges that he has received a copy of the Partnership Agreement, but he suggests that no legal due diligence was done because nothing came of it. This is evidently wrong. The Defendant clearly had full knowledge of the terms of the Partnership Agreement. Look at the Framework Agreement pursuant to which the Defendant agreed to become a partner. This was a binding agreement, albeit conditional. The Framework Agreement is at (C/16/1192-1202). Mr Kam's evidence is inconsistent with the existence of the Framework Agreement, which he has ignored. Also look at Golden Meditech Holdings Limited's public announcement of the Framework Agreement (C/14/1049 (KY-13)), which provides a summary of the terms of the Partnership Agreement (C/1059), including the fact that potential investment decisions must be passed by at least three members (C/1062).

11. It is particularly interesting that the Defendant knew that the Partnership included entities wholly independent from Sanpower and that Sanpower's interests represented a minority financial interest."

[194] The Defendant's position amounts to a contention that the entire legal and management structure of the Ying Peng Fund should be ignored, in favour of an informal 'reality', even though the Ying Peng Fund's main operating asset (GCBC) is a large and very valuable business, which is or was publicly listed on a stock exchange, with all the regulation and transparency that entails. That is a deeply unconvincing proposition, and, in circumstances

where the Defendant clearly knew about how the Ying Peng Fund formally and legally functioned, one that is fanciful.

[195] On the other hand, there is no evidence that Mr. Yuan had actual authority to manage the business of the Ying Peng Fund either generally or in respect of those matters to which 29th March 2018 Loan Agreement relates, and strong evidence that he did not. In short, the Defendant also fails to satisfy the second of Diplock LJ's four conditions. That too is fatal for showing that Mr. Xu had apparent or ostensible authority.

[196] But, the Defendant has a yet further fundamental problem.

7.3 The Defendant should have been put on inquiry

[197] On the Defendant's own case, the Defendant, at the request of Mr Yuan, had deliberately concealed the Defendant's and Sanpower's dealings with the money the Ying Peng Fund had paid into the Escrow Account to pay for the GCBC Shares.¹⁰ The Defendant's case is that Mr. Yuan had told Mr Kam that he did not want the Ying Peng Fund partners to know that Sanpower had stepped in because there was a shortfall on the Escrow Account. The Amended Defence and Counterclaim says, at paragraph 49: *"Sanpower Group (rather than Ying Peng) was the borrower under the Sanpower January 2018 Loan Agreement at the request of Mr Yuan, who explained that this was because he did not want the other general partner and limited partners of Ying Peng to know about this agreement and know that Ying Peng had not paid the full Consideration on closing."* The Sanpower January 2018 Loan Agreement was later replaced by the 29th March Loan Agreement.

[198] Another similar extraordinary feature of this putative transaction was that, on the Defendant's case, Mr. Yuan allegedly did not want the Cayman and BVI Share Charges registered so as not to make them public.

[199] If the Defendant is right about this intention and desire on the part of Mr. Yuan to conceal these purported loan arrangements from the general and limited partners of Ying Peng, upon the Defendant becoming aware of this desired concealment, the Defendant must reasonably be

¹⁰ Amended Defence and Counterclaim paragraph 66.

expected to have been put on inquiry as to Mr. Yuan's authority to act on behalf of Ying Peng Fund in respect of these arrangements, the very target of the concealment itself.

[200] In the Privy Council case of **East Asia Co Ltd v PT Satria Tirtatama Energindo**,¹¹ the Board expressed the considered and carefully explained view, albeit *obiter*, that a person 'cannot presume in his favour that things are rightly done if the inquiry that he ought to make would tell him that they were wrongly done'. The Board concluded in that case that the contracting party could not rely upon the apparent authority of the company's agent if the contracting party failed to make the inquiries a reasonable person would have made in all the circumstances in order to verify that he had that authority.¹²

[201] In the present case, if the Defendant had been acting reasonably, when confronted with an alleged desire on the part of Mr. Yuan for Ying Peng Fund to enter into a contract with the Defendant (through the agency of Mr. Xu, Mr. Yuan's 'very close associate') that Ying Peng's very own owners and managers were not supposed to know about, and with share charges to be issued but not registered in order that they might be concealed from the public, then it is difficult to see how the Defendant (acting reasonably) could not have been put on inquiry as to whether Mr. Yuan, and by extension Mr. Xu, had Ying Peng Fund's authority to do this. The natural and reasonable questions the Defendant would in such a case be expected to ask are 'Can Mr. Yuan actually do this? If so, please show us on what basis.' Instead, the Defendant did not. On its own case, any such reasonable train of inquiry was trumped by a purported desire on the Defendant's part to help Mr. Yuan not lose face. In my respectful judgment, that is not a rational basis for failing to make the obvious inquiry as to actual authority which this extraordinary transaction would have provoked in the mind of a reasonable person, and a trial is not required to establish this.

[202] Thus, even if the Defendant could satisfy the first two conditions identified by Diplock LJ in **Freeman & Lockyer** (which they do not), the Defendant still cannot rely upon Mr. Xu having had apparent or ostensible authority to act as a loan agreement execution agent for the Ying Peng Fund, because the Defendant failed to make the inquiries a reasonable person would have made in all the circumstances in order to verify that Mr. Xu had that authority.

¹¹ [2019] UKPC 30 at paragraph 92.

¹² At paragraph 93.

- [203] The net result is that the Defendant cannot and does not raise a sustainable case, on its face, including on the evidence currently before the Court and as might be likely to be forthcoming, (a) that the signatures and Ying Peng Fund chop on the Disputed Documents are genuine; or (b) that Mr. Xu had actual, apparent or ostensible authority to bind the Ying Peng Fund by executing the 29th March 2018 Loan Agreement or causing it to be executed. The Defendant's Re-Amended Defence and Counterclaim, premised as they are on those two key propositions, therefore do not bear a reasonable prospect of success.
- [204] In consequence, the Claimants are entitled to summary judgment on their claims and no purpose would be served to permit the Defendant to re-amend its pleadings.
- [205] This is sufficient to dispose of the matter. If, as I find, the Defendant does not have a reasonable prospect of succeeding on these issues, I need not go on to decide whether Mr. Xu had actual or apparent and/or ostensible authority to sign the BVI Share Charge. That is because if the Defendant cannot invoke reliance upon the 29th March 2018 Loan Agreement, it cannot invoke the BVI Share Charge, as an instrument which purportedly secures it.
- [206] For completeness, in my respectful judgment a similar analysis applies in respect of the BVI Share Charge. At the very least the Defendant should have been put on inquiry as to Mr. Xu's actual authority to sign that share charge in light of the alleged underhand nature of the purported transaction that the Defendant was supposedly agreeable to going along with.
- [207] In my respectful judgment, these are the only matters on which it is appropriate to grant summary judgment. The other issues are, of themselves, triable.
- [208] That includes whether or not there is an outstanding debt. I readily see that if there is no outstanding debt, there is nothing the share charges could attach to, and thus they could not be invoked by way of enforcement of this alleged security. Learned Counsel for the Claimant took the Court through the figures and supporting information. Reminding myself that upon summary judgment the Court should avoid a mini-trial, such an analysis was in my view somewhat too profound for summary judgment. That is all the more so in circumstances where the Claimants had formally simply not admitted the Defendant's case on payments in the

Claimants' pleadings. That quintessentially renders the issue something for the other side to prove, at trial.

[209] Moreover, it is unusual enough to come across a transaction connected to a valuable business that was publicly listed on a major stock exchange which is revealed to bear false signatures and chop. It is even more unusual that the party who seeks to rely upon them accuses the alleged contractual counterparty of appending false signatures and chop in order subsequently to be able to disown those documents. Whilst I have come across many allegations of forgery, this is the first time I have been presented with such an allegation.

[210] It is also mightily unusual for contractual documents and security instruments to be prepared, exchanged, discussed and purportedly agreed, all without a single piece of correspondence flowing between the parties, with no lawyers involved in their finalisation, and no lawyers at all involved on the part of the side which stood to lose an entire valuable business if it defaulted (as it allegedly did). It is also most unusual for alleged default in failing to make a loan repayment not to be the subject of any correspondence before the purported security was enforced. All these 'facts' coincide to suit the convenience, and perfectly so, of the party purporting to rely upon these putative documents. It is an understatement that this perfect capsule of coincidences stretches the credibility of a reasonable objective observer to breaking point.

[211] ***But*** a yet further twist to the saga is that, for some reason, the Claimants' side have been coy about explaining and revealing how the Ying Peng Fund paid the Defendant's side the consideration for the purchase of the GCBC Shares. The Claimants jump straight to formal evidence that it had been paid in full by January 2018. But how it was paid we are not told. *Why not?* That omission is stark, in circumstances where the Defendant explained how the payments were made, and how, allegedly, some money was paid out of the Escrow Account for unconnected purposes, which the Claimants do not deny. The simplest way of meeting this case is to say how much of it the Claimants agreed with and to explain why the remainder was incomplete or wrong. The Claimants have deliberately, it would appear, kept the Court in the dark as to what was going on there. Even more suggestively, the Claimants' evidence is that the creation of share charges had indeed been discussed, albeit in connection with Sanpower, but they do not explain the circumstances of this. *Again, why not?* Why, if there was no loan, or an outstanding debt, would share charges be needed, or even discussed, at all? One is,

rightly or wrongly, left with an uneasy impression that some business was afoot here **concerning the payment of the GCBC SPA consideration** which the Claimants themselves were determined not to reveal. Instead, the Claimants seek to brush this off as irrelevant as something (perhaps) concerning Sanpower. But, since it would appear to concern the payment of the GCBC SPA consideration, that would appear to be squarely an issue for an eventual trial of the present claim.

[212] The controversies relating to such matters between the parties are paradigm examples of triable issues. Their result could be that the Defendant's case was right all along. As many cases before this Court demonstrate, truth is often stranger than fiction.

[213] But issues, however curious and in dispute, are not triable in a vacuum. Where the signatures and chop on the Disputed Documents were not genuine, without a sufficient case on authority, the Defendant's case on which it bases its Defence and Counterclaim is hopeless. Without a sufficient case that (a) the signatures and chop in the Disputed Documents were genuine and (b) Mr. Xu had authority to bind the Ying Peng Fund to the terms of the 29th March 2018 Loan Agreement, a trial of the other issues in dispute becomes pointless. Where that is so, the Court should not give in to curiosity but, in the interests of all, including other court users, end the matter there and then, here and now, by way of summary judgment.

8. Disposition

[214] For those reasons, the Claimants' Summary Judgment Application succeeds and the Defendant's Re-Amendment Application fails, with costs to the Claimants.

[215] I take this opportunity to thank Counsel for both sides for their assistance to the Court.

Gerhard Wallbank
High Court Judge

By the Court

Registrar